

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

GARY BACON	§	
VS.	§	CIVIL ACTION NO. 9:20cv89
DIRECTOR, TDCJ-CID	§	

ORDER OVERRULING OBJECTIONS AND ADOPTING  
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Gary Bacon, an inmate confined within the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed the above-styled petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, for consideration pursuant to 28 U.S.C. § 636 and applicable orders of this Court. The Magistrate Judge has submitted a Report and Recommendation of United States Magistrate Judge recommending the petition be dismissed without prejudice.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and pleadings. Petitioner filed objections to the Report and Recommendation.

The court has conducted a *de novo* review of the objections. After careful consideration, the court is of the opinion the objections are without merit. If petitioner prevails on his claim, he would not be entitled to be released from confinement. As a result, his claim may not be asserted in a petition for writ of habeas corpus. *Preiser v. Rodriguez*, 411 U.S. 475, 498 (1973).

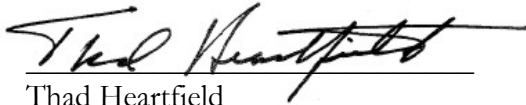
However, as the Magistrate Judge observed, he could conceivably pursue his claim in a civil rights action. As a result, his civil rights claims will be severed from this action and proceed as a separate lawsuit.

ORDER

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is

**ADOPTED.** Petitioner's civil rights claims are **SEVERED** from this action and shall proceed as a separate lawsuit. Sergeant Burleson shall be named as the defendant in the new action and the new action shall be assigned in accordance with the court's normal procedures. A final judgment shall be entered denying the petition.

**SIGNED** this the **2** day of **August, 2021**.

A handwritten signature in black ink, appearing to read "Thad Heartfield", written over a horizontal line.

Thad Heartfield  
United States District Judge